

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

LAVERN BERRYHILL,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,

Defendant.

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Case No. CIV-14-288-W

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing pro se, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. Additionally the Plaintiff has filed a Motion for Leave to Proceed *In Forma Pauperis*, ECF No. 2. United States District Judge Lee R. West has referred the case to the undersigned for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). It is recommended that the action be **DISMISSED** on filing, and that the motion to appear *in forma pauperis* be **DENIED AS MOOT**.

The Plaintiff seeks damages from Defendants United States of America and the State of Oklahoma. The complaint contains allegations that, to the extent they are understandable at all, are familiar to any and all who have read Mr. Berryhill's past filings in this Court. In the Complaint now before the Court Plaintiff alleges an ongoing conspiracy between federal and state officials, and requests "compensation damages: \$1Trillion Each deft... Punitive damages: \$5Trillion Each deft. KKK Act RICO... Plaintiff is in request of an emergency 6th amend. + Lawful Custody hearing... Plaintiff is in Demand of Jury Trial" ECF No. 1:6.

For the following reasons, the undersigned recommends that this action be dismissed as frivolous. First, taking judicial notice of the Court's records, Plaintiff has previously been denied the privilege of proceeding *in forma pauperis* in civil actions filed in this Court based upon the finding that Plaintiff had, at that time, previously filed three or more civil actions that were dismissed for failure to state a claim for relief and/or as frivolous.

See:

Berryhill v. United States of America, Case No. CIV-13-1267-W (Order entered January 21, 2014, West, D.J.);

Berryhill v. Okla. Dep't of Corr., Case No. CIV-12-279-W, (Order entered March 27, 2012, West, D.J.) (appeal dismissed for lack of prosecution);

Berryhill v. Workman, Case No. CIV-11-363-D (Order entered May 20, 2011, DeGiusti, D.J.)(appeal dismissed for lack of prosecution);

Berryhill v. Jones, Case No. CIV-11-307-D (Order entered April 21, 2011, DeGiusti, D.J.);

Berryhill v. Vicki Miles-LaGrange, Case No. CIV-10-802-H (Order entered September 30, 2010, Heaton, D.J.)(appeal dismissed for lack of prosecution);

Berryhill v. Greenway, Case No. CIV-10-714-D (Order entered August 4, 2010, DeGiusti, D.J.)(appeal dismissed for lack of prosecution);

Berryhill v. Halvorson, Case No. CIV-08-197-D (Order entered April 24, 2008, DeGiusti, D.J.);

Berryhill v. Poppell, Case No. CIV 99-407-T (Order entered May 25, 1999, Thompson, D.J.).

Moreover, Plaintiff's allegations in the Complaint now before the Court are legally and factually frivolous. The Defendants named in the Complaint are protected by sovereign immunity from Plaintiff's claims, which raise various bizarre and nonsensical deprivations. Thus, his claims are "based on an indisputably meritless legal theory" and are both legally and factually frivolous. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)(superseded by statute on other grounds). Where allegations in a complaint such as this one are clearly baseless, fantastic, and delusional, the action should be dismissed pursuant to 28 U.S.C. § 1915A(b)(1). *See Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992)(lawsuit may be dismissed under 1915A(b)(1) "as factually frivolous only if the facts alleged are 'clearly baseless,' a category encompassing allegations that are 'fanciful,' 'fantastic,' and 'delusional'"(superseded by statute on other grounds). Furthermore, after being granted an opportunity to show cause via objection to this Report and Recommendation, the undersigned recommends that Plaintiff be ordered to pay sanctions for his repeated frivolous filings, and that filing restrictions be imposed for any future civil rights claims filed in the United States District Court for the Western District of Oklahoma.

Plaintiff's Motion for Leave to Proceed *In Forma Pauperis*, ECF No. 2, should be **DENIED AS MOOT**. The undersigned notes that even if the motion to proceed *in forma pauperis* were considered on its merit, it would be subject to denial under 28 U.S.C. § 1915(g), the so-called three-strikes provision of the *in forma pauperis* statute.

RECOMMENDATION

In light of the foregoing, it is recommended that Plaintiff's cause of action be **DISMISSED** without prejudice. In light of that recommendation, it is further recommended that Plaintiff's Motion for Leave to Proceed *In Forma Pauperis*, **ECF No. 2, BE DENIED AS MOOT**. Plaintiff is advised of the right to file an objection to this Report and Recommendation with the Clerk of this Court by **April 21, 2014**. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal questions contained herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED on April 4, 2014.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE